

STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

DE 08-123

**FPL Energy Maine Hydro LLC – North Gorham Project Hydro Facility
and**

DE 08-124

**FPL Energy Maine Hydro LLC – Bar Mills Project Hydro Facility
Applications for Class IV Renewable Energy Certificate Eligibility**

**PETITION OF GRANITE STATE HYDROPOWER ASSOCIATION
AND ASHUELOT RIVER HYDRO, INC.
FOR ADJUDICATIVE PROCEEDING,
MOTION FOR CONSOLIDATION WITH DOCKET DE 08-053
AND MOTION TO SUSPEND DECISIONS**

NOW COME Granite State Hydropower Association, whose members include approximately 45 small hydroelectric power projects located throughout New Hampshire (“GSHA”), and Ashuelot River Hydro, Inc., a GSHA member which owns the Ashuelot Paper and Lower Robertson projects in Winchester, New Hampshire (“ARH”, and together with GSHA, “Petitioners”), and respectfully:

- 1) Petition the New Hampshire Public Utilities Commission (“the Commission”) under N.H. Admin. Rule Puc 2505.13 and RSA 541-A:31, I to conduct an adjudicative proceeding in the above-captioned matters;
- 2) Move to consolidate the instant proceeding with Docket DE 08-053; and
- 3) Move that the Commission exercise its authority under RSAs 541:5 and/or 365:28 and suspend its decision pending further consideration of the matters raised herein.

In support of the foregoing requests, Petitioners state as follows:

BACKGROUND AND PROCEDURAL HISTORY

1. On September 25, 2008, FPL Energy Maine Hydro LLC (“FPL Energy”) filed applications with the Commission requesting that two of its small hydroelectric facilities, i.e. the North Gorham Project on the Presumpscot (“North Gorham”) and the Bar Mills Project on the Saco (“Bar Mills”, and together with North Gorham, the “FPL Facilities”), be certified as renewable energy sources eligible to receive Class IV renewable energy certificates (“RECs”) under RSA 362-F (the Electric Renewable Portfolio Standard Act, hereinafter the “RPS statute”) and N.H. Admin. Rules Puc 2500.

2. By letter dated October 21, 2008, GSHA objected to the above-referenced applications on the ground that the FPL Facilities fail to qualify for Class IV RECs because they have not installed both upstream and downstream fish passages as required by RSA 362-F:4, IV. As support for its position, GSHA’s letter cited and incorporated by reference several filings it made in DE 08-053, a docket involving the identical legal issue raised in the October 21st letter. GSHA’s letter also requested that the Commission not act on FPL Energy’s applications until a final, unappealable decision on the fish passage question has been issued in DE 08-053.

3. On October 30, 2008, the Commission’s Executive Secretary and Director issued letters indicating that the Commission had reviewed FPL Energy’s applications and determined that all of the necessary information had been provided to demonstrate that both FPL facilities are eligible for certification as Class IV facilities and are eligible to be issued New Hampshire Class IV renewable energy certificates effective September 25, 2008. Although the October 30th letters made no reference to GSHA’s objection

letter dated October 21, 2008, they did acknowledge that in Docket No. DE 08-053, “certain parties have raised questions regarding specific fish passage requirements necessary for Class IV certification...” and that the result of that proceeding could affect the certification of the FPL Facilities. *Letters from Debra A. Howland, Executive Director and Secretary to F. Allen Wiley, Vice President, October 30, 2008, p. 2.*

4. Petitioners respectfully assert that, in light of the arguments raised in GSHA’s October 21, 2008 letter, as well as the arguments they have raised in DE 08-053 which are incorporated by reference herein, the instant proceeding has “reached a stage at which it is considered a contested case” within the meaning of RSA 541-A, 31, I., and that an adjudicative proceeding should be commenced. For the sake of administrative efficiency, Petitioners respectfully request that the instant dockets be consolidated with Docket No. DE 08-053. They further request that the Commission’s decisions embodied in the secretarial letters dated October 30, 2008 be suspended until the issues in DE 08-053 are finally resolved.

PETITION PURSUANT TO PUC 2505.13

5. Puc 2505.13 provides that the Commission must conduct an adjudicative proceeding pursuant to RSA 541-A and Puc 200 upon petition by an applicant, source or other party aggrieved by a decision under the Commission’s Electric Renewable Portfolio Standard Rules. ARH and a number of GSHA’s other members are aggrieved by the Commission’s decisions to certify the two FPL Facilities for Class IV RECs under RSA 362-F:4, IV. By interpreting the RPS statute in a way that allows certification of facilities that have not actually installed upstream and downstream fish passage facilities

in response to FERC requirements, rather than interpreting the statute to confine certification only to that subset of small hydroelectric facilities that have actually installed upstream and downstream fish passage facilities in response to FERC directives, the Commission has undercut the Class IV REC market and undermined the intent of the RPS statute. The certification of the PSNH facilities in DE 08-053 has already created market distortions. One REC broker with whom a representative of GSHA has recently spoken, indicated that as a result of the Commission's September 23, 2008 certification in DE 08-053, buyers are now bidding New Hampshire Class IV RECs at \$1.00 even though the alternative compliance payment for this Class is more than \$28.00.

6. GSHA members who are constructing fish passage facilities or those like ARH who have recently purchased projects that will require the installation of fish passages have reasonably relied upon the availability of Class IV REC payments in accordance with the underlying intent of the RPS statute. ARH purchased the Ashuelot Paper and Lower Robertson projects in Winchester (both of which are approximately 900 kw) in 2007. These two projects had both installed downstream fish passage facilities required and approved by FERC many years ago, but both projects are also under a FERC order to install upstream fish passage within one year of the date by which 750 shad have passed upstream from the Fiske Mill dam, the first (lowest) dam on the Ashuelot River in Hinsdale. The Fiske Mill project is currently in the process of constructing upstream fish passage facilities required by FERC, and ARH believes that the benchmark number of shad will pass upstream from the Fiske Mill project, thus triggering the requirement for upstream fish passage facilities to be installed at Ashuelot Paper, shortly after installation of the Fiske Mill fish passage. ARH is in the process of

designing its own upstream fish passage facilities based on FERC orders, but has not started construction. ARH estimates that the total cost for both projects of designing and constructing the necessary upstream fish passage facilities may exceed \$700,000, and it is relying on the sale of Class IV REC's to help defray these costs and keep the two projects economically viable. GSHA and ARH contend that instead of supporting the maintenance of existing hydroelectric projects as the Legislature intended, *see* RSA 362-F: 1, the Commission's decision is financially harming such small hydro generators.

MOTION FOR CONSOLIDATION WITH DOCKET NO. DE 08-053

7. Given that the issues raised by GSHA and ARH in the instant dockets are presently under consideration by the Commission in Docket DE 08-053, a point expressly recognized in the Secretarial letters dated October 30, 2008, the interests of justice and administrative efficiency warrant that these dockets be consolidated with DE 08-053.

MOTION FOR SUSPENSION OF CERTIFICATION DECISION

8. The Commission's REC certification decision should be immediately stayed to prevent further distortion of the REC market and financial harm to small hydroelectric facilities that qualify for Class IV RECs, pending a final, unappealable decision in Docket DE 08-053 and this docket.

WHEREFORE, Petitioners respectfully request that the Commission:

A. As soon as possible, to prevent further damage to the Class IV REC market, convene an adjudicative proceeding as provided in N.H. Admin. Rule Puc 2505.13 and RSA 541-A:31, I on the contested matters raised herein;

B. Consolidate the instant dockets with Docket No. DE 08-053;

C. In the event that the Commission does not order the above-requested consolidation, then GSHA and Ashuelot request that the Commission take administrative notice under RSA 541-A: 33, V of all of the documents filed in Docket DE 08-053;

D. Suspend the October 30, 2008 certification decisions pursuant to the Commission's authority under RSAs 541:5 and/or 365:28, pending further consideration of the matters raised herein; and

E. Grant such further relief as it deems appropriate.

Date: November 26, 2008

Respectfully submitted,

GRANITE STATE HYDROPOWER ASSOCIATION

and

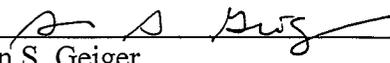
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was, on this date, sent either by first-class mail, postage prepaid, or by electronic mail to those persons listed on the Service List.

Date: November²⁶, 2008


Howard M. Moffett 

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